IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5446 OF 1996

Chief Executive Officer,
Sangli Urban Co-op Bank Ltd. .. Petitioner

versus

Manager, Sarva Shramik Sangh & Anr. .. Respondents

...

Ms.Seema Sarnaik for the petitioner.
Mr.N.V. Walawalkar for the respondent no.5.
Ms.S.S. Bhende, AGP for the respondent.

CORAM : B.H. MARLAPALLE,J
DATED : 30th August 2005.

ORAL JUDGEMENT :-

1. The petitioner Bank has suffered a decree of execution in the sum of Rs.37,51,800/- passed by the Authority under the Payment of Wages Act 1936 (for short 'the Act') confirmed by the lower Appellate authority i.e. the District Court. The facts relating to this petition and which are not in

dispute may be listed as under.

2. The petitioner is an Urban Co-operative Bank and it had advanced loan to Respondent no.2, a Private Limited Co. Respondent no.1 is a trade union registered under the Trade Unions Act 1926 and it claimed to represent the workmen employed by the respondent no.2. It was claimed that about 90 workmen were employed by respondent no.2 and from January 1991, the said factory was closed down. Prior to January 1990, there was a lay off in the said factory. The respondent no.1 union therefore approached the Competent Authority and the Judge of the Labour Court by filing an application u/s.15(2) of the Act. The present petitioner was impleaded as the respondent no.2 in the said application. Though, admittedly, it was not the employer or the person/agency responsible for the supervision and control of the day to day activities, it was claimed in the said application by the respondent no.1 that the machinery of respondent no.2 factory was hypothecated to the petitioner Bank against the loan advanced by it and on account of the closure of the factory, the Bank had attached the said machinery as well as goods. The respondent no.2 factory had

addressed a letter to the Bank on 29th December 1990 stating that the factory was closed and the management was not able to provide any security arrangement to the factory premises on account of the paucity of funds. Under these circumstances, the petitioner Bank took possession of the said properties in terms of the agreements of mortgage and hypothecation and kept a watchman for the security of the said property.

3. The application filed by the Union on or about 18th November 1991 came to be registered as Payment of Wages Application no. 12 of 1991. On notice, the management of the factory as well as the Bank appeared before the Labour Court and filed a written statement opposing the application. The petitioner Bank had contended that the application was not maintainable against it on the ground that it was not an employer of the workmen whose claim was agitated in the said application. The learned Judge of the Labour Court discarded this plea in his judgement and order dated 10th January 1994 and held that the claim made by the respondent no.1 Union was maintainable against the petitioner Bank. The learned Judge came to the conclusion that the

property was hypothecated to the Bank and the petitioner Bank was responsible for the supervision and control of the factory of respondent no.2 Management. The Labour Court referred to the provisions of Section 3 of the Act and more particularly clause (b) of the proviso thereunder and held that the objection raised against the maintainability of the application on account of the absence of the employer-employee relationship was untenable.

4. During the course of arguments, the petitioner Bank had also raised a second objection before the Labour Court viz. its powers to entertain an application u/s.15(2) when the very same claim was already decided by the Asstt. Labour Commissioner as the competent authority u/s.33-C(2) of the Industrial Disputes Act 1947 (for short 'the I.D Act'). The learned Judge of the Labour Court held that consequent to the execution decree passed by the Asstt. Labour Commissioner, the certificate of recovery was issued and the Tahsildar could not execute the same as the property was hypothecated to the petitioner Bank and therefore, a fresh application filed u/s.15(2) of the Act against the

bank was maintainable. The Labour Court also relied upon the provisions of Section 15(5) of the Act as incorporated by the State of Maharashtra. The Lower Appellate Authority considered the reasoning set out by the Labour Court and the arguments advanced by the respective parties. It has confirmed the view taken by the Labour Court. Thus, both the authorities below are against the petitioner.

5. While reiterating the very same grounds opposing the application of the Labour Court, the learned counsel for the petitioner also referred to the provisions of section 47 of the Maharashtra Co-operative Societies Act, 1960 and by referring to the provisions of sub-section 2 of the same Section, he submitted that no property or interest in the property which is subject to a charge in favour of the petitioner shall be transferred in any manner without the previous permission of the Society and such transfer shall be subject to such conditions if any as the Society may impose.

. By relying upon the scheme of section 47 of the Maharashtra Co-operatives Act, it was submitted that once the property was hypothecated and/or

mortgaged in favour of the petitioner bank, no other authority could raise the first charge against such a property unless the petitioners charge was wholly discharged.

6. The learned counsel for the respondent union on the other hand has supported the orders passed by both the Courts below and submitted that there is no case made out to disturb the concurrent findings recorded in the impugned orders.

7. While the factory was under closure, the Management and the respondent no.1 union entered into a settlement on 14th November 1991. It was noted in the said settlement that the factory was closed from 31st October 1991 and every workmen listed in the schedule to the settlement shall receive the amounts shown against his name towards closure compensation, gratuity, bonus, leave encashment, notice pay and the payment of salary from July to October 1991. So far as the salary for the period from February to June 1991 was concerned, the settlement referred to the certificate issued by the Labour Commissioner u/s.33-C(2) of the I.D. Act. It was also stated

that the total amount payable in terms of the settlement would come to Rs.34,16,353/-. The Labour Court has granted this amount as well as the amount of Rs.3,34,726/- towards the salary for the period from February to June 1991 in terms of the certificate issued by the Labour Commissioner.

8. The relevant provisions of the Act viz. section 3, 5 along with Sec.33-C of the I.D. Act are reproduced as under.

> **3. Responsibility for payment of wages**- Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act;
>
> Provided that, in the case of persons employed (otherwise than by a contractor)
>
> (a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section(1) of section 7 of the Factories Act, 1948
>
> (b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;
>
> (c) upon railways (otherwise than in factories,) if the employer is the railway administration

and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be for such payment.

5. Time for payment of wages (1) The wages of every person employed upon or in -

(a) any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(b) any other railway, factory or industrial or other establishment, shall be paid before the expiry of the tenth day,

after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated..

(3) The State Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) or to persons employed as daily rates workers in the Public Works Department of the Central Government or the State Government from the operation

of this section in respect of the wages of any such persons or class of such persons:

Provided that in the case of persons employed as daily rates workers as aforesaid, such order shall be made except in consultation with the Central Government.

(4) Save as otherwise provided in sub-section (2), all payments of wages shall made on a working day..

Sec.33-C of the I.D. Act.

33C. Recovery of money due from an employer. (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of chapter VA or Chapter VB the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proved to recover the same in the same manner as an arrear of land revenue.

. Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

. Provided further that any such application may be entertained after the

expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may thing fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

> (5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

9. The moot question requiring consideration in this petition is when the claim for recovery of salary/wages was computed u/s.33(C)(2) of the I.D. Act, was it permissible for the Labour Court as an authority under the Act to entertain an application for the very same claim u/s.15(2) of the Act and the answer has to be in the negative.

10. Sub-section (2) of section 33-C of the I.D. Act states that wherein any workmen is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, and if any question arises as to the amount of money due or as to the money at which such benefit shall be computed then the question may, subject to any to any rules that may be made under the Act be decided by such Labour Court as may be specified in that behalf by the appropriate Court within a period not excluding three months. As per Sub-section (4), the

decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided under sub-section (1) viz.. it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. Sub-section(5) provides for a single application being made on behalf of or in respect of any number of workmen. In the instant case, the record in Writ Petition no.3391 of 1996 which has been filed by the respondent no.1 Union shows that after the settlement dated 18th November 1991 was signed between the parties, the Asstt. Commissioner of Labour at Sangli issued a recovery certificate u/s.33-C(1) of the I.D. Act on 22nd January 1992 for an amount of Rs.34,16,353.95. Obviously, this certificate was issued while the Payment of Wages Application 12 of 1991 was pending before the Labour Court.. The total amount covered under the certificates issued by the Asstt. Labour Commissioner on 7th August 1990 and 22nd January 1992 came to Rs.37,51,080/-. Once these certificates were issued, it was for the Collector to recover the amount covered under the said certificates by the methods/modes as are available for recovery of the

land revenue. It is not permissible for the employees to approach the authority under the Act afresh for recovery of the very same claim for more than one reasons. Both the parties i.e. the authority under the scheme of section 33C of the I.D. Act and the authority u/s.15 of the Act functions as executing Courts and in plain language, a decree passed by one forum cannot be subject matter of execution before another forum created under a different statute. Secondly, the mode of execution for the decree is to be passed either u/s.33C of the I.D. Act or under section 15 of the Act is the same viz. the execution of the decree by the Collector by the same modes as are available for the recovery of land revenue. Just because the order under the Act is passed by the Labour Court, it cannot mean that the claim adjudicated u/s.33C of the I.D. Act cannot be executed. The learned Judge of the Labour Court fell in manifest error in entertaining the application for the very said claim which was already determined under the proceedings filed earlier u/s.33C of the I.D. Act.

11. If regards be had to the scheme of Sec.3 of the Act, if is evidence that the Petitioner Bank can

not be covered under clause (b) of the proviso thereunder. Clause (b) has been added keeping in mind the fact that there are certain establishments which are either proprietory or partnership concerns and therefore, in the said establishments, it is not necessary to proceed against the proprietors or the partners and the persons appointed by them for being responsible for the supervision and control of the industrial establishment can also be proceeded against. Similarly, in an establishment run by a Company, it is the Manager who is responsible to the supervision and control and not the board of directors or the managing director. This however, does not mean that a financial institution who has advanced loans to the establishment and in whose favour the property has been hypothecated can be termed as a person responsible to the employer for the supervision and control of the industrial establishment. In the instant case, the bank is not, by any stretch of imagination responsible to the respondent no.2 industrial establishment. On taking over the property hypothecated, the property has remained in the premises of the establishment itself and the petitioner Bank has provided the security guards. This does not mean that the Bank has taken

over the Management of the respondent no.2 factory. On this ground also, the application was not maintainable. It is thus clear that on both the counts, the learned Judge of the Labour Court entertained the application in excess of his jurisdiction and he ought to have rejected the application filed u/s.15(2) of the Act as not maintainable.

12. In the premises, this petition succeeds and the same is hereby allowed. The impugned orders passed by the Courts below are hereby quashed and set aside. Payment of Wages Application no.12 of 1991 stands dismissed.

Rule is made absolute accordingly with no order as to costs. The amount deposited with the Registrar of this Court shall be subject to the final decision in Writ Petition no. 3391 of 1996.

B.H. MARLAPALLE, J